2014 IL App (2d) 130500-U
No. 2-13-0500
Order filed December 23, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CRUZ UROSTEGUI-FLORES, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 10-CF-4094 Honorable Christopher Stride, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in rejecting defendant's claim of self defense where issue turned primarily on matters of credibility.

¶ 2 I. INTRODUCTION

¶ 3 Defendant, Cruz Urostegui-Flores, was convicted of aggravated battery (causing great bodily harm) (720 ILCS 5/12-3.05 (West 2010)). He now appeals, contending the State did not prove that he was not acting in self defense. For the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 Defendant was convicted after a bench trial, at which the following evidence was produced. Salvador Mateos Suarez, the victim, first testified for the State. He testified that on October 15, 2010, he was visiting his father. He and a friend, Daniel Olivares, drove to Suarez's father's house in his father's car. His father, Salvador Mateos Cruz, was also in the car. They arrived at about 8 p.m. After about half an hour, Suarez and Olivares left. It was dark. They were to be picked up by a third friend, Lucio Gallegos. As Suarez was getting into Gallegos's car, defendant hit him "over the face" with a bottle.

¶ 6 Suarez testified that he knew defendant from work. They used to "get along;" however, when Suarez became defendant's manager, their relationship deteriorated. About 15 days before the assault, Suarez and defendant had been involved in a shoving match. Suarez denied punching or kicking defendant, but acknowledged that he was bigger than defendant.

¶ 7 Suarez's father testified that his son and Olivares had driven home with him on October 15, 2010. Olivares called Gallegos for a ride. His son and Olivares left, and, about five minutes later, his son returned. He was bleeding from the face and stated that defendant had struck him.

¶ 8 Gallegos testified that he came to pick up Suarez and Olivares. There were a number of people arguing in a back alley. Suarez was bleeding. He did not actually see what happened to cause Suarez's injury.

¶ 9 Octavio Gonzalez, who was the supervisor of defendant and Suarez, testified for defendant. In early October 2010, Gonzalez received a telephone call and went to the location where Suarez and defendant were working. He did not observe a fight, but he noted that defendant's face was scratched and red. Suarez told Gonzalez that he and defendant had been in a fight.

¶ 10 Defendant next testified on his own behalf. He stated that he knew Suarez and his father from work. They were friends for a time. In early September 30, 2010, he and Suarez were working together as part of a group. Suarez was in charge. Defendant and Suarez got into a physical altercation. Defendant testified that they were talking, and, "[a]ll of a sudden, *** he started hitting me, and he hit me really bad." Suarez struck defendant in the left eye. Suarez threw about six punches. A friend separated them. Suarez said he would hit defendant again, wherever he would find him.

¶ 11 On October 16, 2010, defendant testified, he got off work at 3 p.m. and went to his aunt's house. She lived in the same building as Suarez's father. Defendant never saw Suarez at his father's home. Defendant was sitting in the backyard of his aunt's house. It was dark, and defendant was alone. At about 7:15 p.m., Suarez, his father, and Olivares arrived in a car. Defendant was looking at Facebook on his cell phone. Suarez and his father saw defendant and exited the car. Olivares exited as well. Suarez's father pulled out a knife. Defendant testified that Suarez said that they were going to hurt him "like they had hurt me prior—he had hurt me prior at work." Defendant was "really afraid." Defendant picked up a bottle, which was sitting nearby, and threw it at them. Defendant then escaped to his aunt's home and locked himself inside. He did not know whether he had hit anyone with the bottle. He remained in his aunt's home for two hours, and then he went home.

¶ 12 On cross-examination, defendant admitted that he neither sought medical attention nor called the police after the fight that had purportedly occurred at work on September 30, 2010. Defendant acknowledged that he did not scream or call for help when Suarez, his knife-wielding father, and Olivares allegedly approached him. Defendant did not call the police after this incident either, and he never reported it subsequently.

¶ 13 The trial court began its ruling by stating that it had considered all the testimony and arguments of counsel; however, it was "not going to mention all of it" and instead "highlight a couple things." The court found that Suarez and defendant had been involved in some sort of altercation about 15 days prior to the incident at issue here. The court then stated that this case turned on matters of credibility. The court noted that the beer bottle that defendant purportedly hurled at the advancing trio of assailants struck the individual with whom defendant "had a beef" rather than the person wielding the knife. It further noted that defendant did nothing after he retreated to his aunt's house and that defendant did not call 911 despite the fact that he had a cell phone in his hand. The court found Suarez's father particularly credible and noted that Suarez's father partially corroborated Suarez's testimony. Furthermore, Gallegos also corroborated Suarez to an extent. The trial court then found defendant guilty of aggravated battery based on his causing great bodily harm to Suarez. This appeal followed.

¶ 14 III. ANALYSIS

¶ 15 On appeal, defendant argues that the State failed to prove beyond a reasonable doubt that he was not acting in self defense when he caused the injuries to Suarez. When a defendant challenges the sufficiency of the evidence, it is not our role to retry the defendant. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991). Rather, our inquiry focuses upon whether, viewing the evidence in the light most favorable to the State, any rational fact-finder could have found the defendant guilty beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Where the evidence is sufficient to raise the issue of self defense, the State must, in addition to proving the elements of the crime, also prove beyond a reasonable doubt that the defendant's actions were not justified. *People v. Goodman*, 77 Ill. App. 3d 569, 573 (1979). To raise a claim of self defense, a defendant must present evidence showing "that force had been threatened

against him; that defendant was not the aggressor; that danger of harm was imminent; that the force threatened was unlawful and that defendant actually believed the danger existed; that the kind and amount of force was necessary to avert the danger; and defendant's belief was reasonable." *People v. Harper*, 264 Ill. App. 3d 318, 321-22 (1994). The State must disprove at least one of these elements. *Id*. at 322. This issue presents a question of fact. *Id*.

¶ 16 We agree that defendant set forth evidence sufficient to raise the issue of self defense. See *Harper*, 264 Ill. App. 3d 318, 321-22. Defendant's evidence, if believed, indicates that three individuals approached him while he was alone, one was wielding a knife, and another, who had previously assaulted him, verbally threatened to do him harm. The problem for defendant, however, is that the trial court did not believe him. The trial court cited both the implausibility of defendant's version of events as well as the fact that Suarez's version was corroborated to an extent by the testimony of other witnesses.

¶ 17 Defendant, nevertheless, argues that the trial court "failed to consider substantial evidence corroborating" his testimony. In actuality, defendant is asking us to reweigh the evidence and reevaluate the credibility of the witnesses—things that we cannot do (*People v. Sykes*, 341 Ill. App. 3d 950, 982 (2003)). For example, defendant first contends that the trial court "failed to sufficiently recognize the testimony of Octavio Gonzalez about the altercation between Suarez and the defendant two weeks before the charged offense." Defendant contends that Gonzalez's testimony that he observed injuries on defendant's face contradicted Suarez's testimony that he did not strike or punch defendant during that confrontation. At most, this created a conflict regarding Suarez's credibility. Of course, resolving conflicts in the evidence is also for the trier of fact. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). We see nothing so

compelling in Gonzalez's testimony that the trial court was required to accept it and reject Suarez's testimony.

¶ 18 Defendant further contends that the trial court did not properly assess Gallegos's testimony. Defendant points out that Gallegos testified that he observed a number of people in the back alley. This, according to defendant, is more consistent with his version of events: he testified that he was approached by three people whereas Suarez testified that he was simply walking to this car when defendant approached and attacked him. Assuming defendant is correct, this, again, merely creates a conflict in the evidence for the trial court to resolve. See, *Campbell*, 146 Ill. 2d at 375. We note that the trial court's decision to credit Suarez's testimony was not solely based on Gallegos's testimony corroborating it.

¶ 19 Finally, defendant asserts that the trial court's bases for rejecting his testimony are unsound. Defendant objects to the trial court's observation that he did not call 911 despite having a cell phone in his hand, instead electing to throw a bottle. Defendant contends that it was not unreasonable for him to "obtain a brief moment of time to effectuate his retreat into his aunt's house." Defendant points out that he is not required to have exercised perfect judgment. See *People v. McGrath*, 193 Ill. App. 3d 12, 29 (1989). Granting defendant this point, it does not explain why, if he was truly the victim of an unprovoked assault, he did not call 911 once locked inside the house. Thus, defendant's contention that the trial court "utterly failed to consider the imminent threat to defendant" is unfounded. Once that threat had been removed (on defendant's version of events), defendant still did not call 911.

¶ 20 Defendant contends that the trial court "failed to acknowledge the evidence corroborating [his] self-defense theory and the contradictions in testimony that rebutted the alleged victim's testimony." This is simply not the case. As that trial court explained when it began its ruling, it

had considered all of the evidence and was only commenting on certain "highlight[s]." This is not improper. See *In re Jaron Z.*, 348 Ill. App. 3d 239, 262-63 (2004); *McMahon v. Chicago Mercantile Exchange*, 221 Ill. App. 3d 935, 950-51 (1991). Moreover, it is well established that we review the result at which the trial court arrived rather than its reasoning. *People v. Johnson*, 298 Ill. 2d 118, 128 (2003). Hence, the mere fact that the trial court did not discuss every aspect of the evidence provides no basis for reversal.

¶ 21 In light of the foregoing, the judgment of the circuit court of Lake County is affirmed.

¶ 22 Affirmed.